IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 179 OF 2005

Dattatray Bhimashankar Mhetre ... Appellant
(Ori. Defendant No.4)

V/s

Someshwar Vasant Mhetre & ors. ... Respondents

Mr. S.M. Sahasrabudhye holding for G.S.Godbole for the appellant.

Ms. Sanjivani P. Rane for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 4TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Solapur, dated 15.1.2005 dismissing the appeal against the order passed by the Civil Judge, Jr.Divn., Mohol dated 17.3.2004 in final decree application holding that the area of suit property would be 85 ft. x 23 ft. of which order was passed and partition was suggested on the basis of Court Commissioner's report.

2. I have heard the learned counsel for both parties. Perused the record.

3. It appears that on 5.5.2005, after hearing both parties, this Court has directed that the matter be placed for final hearing at the time of admission after issuing notices to the respondents in question. Accordingly, the parties have appeared. I have heard the parties. It is to be noted that an advocate was appointed as the Court Commissioner to suggest the partition of the suit property. The appellant had prayed that the expert or D.I.L.R. should be appointed to effect the partition in order to assist the Court. However, that application was rejected and advocate was appointed as the Court Commissioner. No doubt that the lower appellate Court has rejected the plea of appointing expert and confirming the order of the lower Court on the basis of report of the Court Commissioner who was advocate. However, it is needless to mention that in such a case it is always in the interest of both parties that expert should be appointed to meet the ends of justice.

4. In view of this position, it is hereby directed that the order dated 17.3.2004 of the lower appellate Court, dismissing the appeal is hereby set aside.

The matter is remanded to the Trial Court for adjudication afresh after appointment of the Court Commissioner who would be a surveyor or D.I.L.R. to carry out the measurements of the suit property. The Trial Court shall take necessary steps for appointment of such Court Commissioner as directed by this Court.

On receipt of the report of the Court Commissioner, the Trial Court is directed to pass necessary order in final decree application.

It is further directed that the matter shall be disposed of as earlier as possible and in any case within four months from the date of receipt of writ of this Court.

It is further clarified that both parties would be having liberty to put up their necessary cases and original plaintiff shall have liberty to make application under Sec. 152 of the C.P.C. in the said proceeding.

With these directions the appeal as well as the Civil application No. 377 of 2005 stand disposed of with no order as to costs.

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